

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

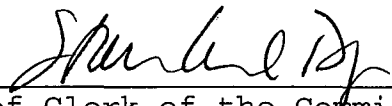
In the Matter of the Application of)
SPRINTCOM; INC. and NPCR, INC.)
To Amend NPCR, Inc.'s Designation)
as an Eligible Telecommunications)
Carrier in the State of Hawaii to)
Include Sprintcom, Inc. in Areas)
Served by a Non-Rural Telephone)
Company.)

DOCKET NO. 2007-0402

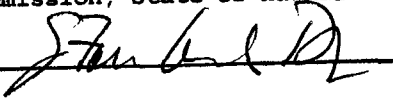
DECISION AND ORDER NO. 24169

Filed April 30, 2008

At 10 o'clock A.M.

for 
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii

for 

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DIV. OF CONSUMER AFFAIRS
DEPT. OF COMMERCE
COUNTY OF HAWAII
STATE OF HAWAII

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Docket No. 2007-0402
Decision and Order No. 24169

DECISION AND ORDER

By this Decision and Order, the commission approves the application jointly filed by SPRINTCOM, INC. ("Sprintcom"), and NPCR, INC. ("NPCR"),¹ on December 4, 2007, to amend the eligible telecommunications carrier ("ETC") designation granted to NPCR, by including Sprintcom in the non-rural telephone company areas where NPCR was previously designated, i.e., the areas served by Hawaiian Telcom, Inc.²

¹Sprintcom and NPCR are collectively referred to as the "Applicants." The DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), is an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HRS") § 6-61-62(a).

²Application; Verification; Exhibits A - H; and Certificate of Service, filed on December 4, 2007, as supplemented on December 31, 2007 (collectively, "Application"), at 2.

I.

Background

A.

Operating Entities

Sprintcom and NPCR are authorized by the Federal Communications Commission ("FCC") and the commission to provide commercial mobile radio services ("CMRS") throughout the State of Hawaii ("State").³ Sprintcom and NPCR are operating subsidiaries of Sprint Nextel Corporation ("Sprint").

Within the State: (1) Sprintcom provides wireless telecommunications services utilizing Code Division Multiple Access ("CDMA") technology; and (2) NPCR has historically provided wireless telecommunications services utilizing integrated Digital Enhanced Network ("iDEN") technology.

B.

Dockets No. 03-0104 and No. 05-0243

On April 25, 2003, NPCR, in In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, filed an application requesting that the commission designate: (1) NPCR an ETC under federal law; and (2) certain rural and non-rural service areas referred to in Exhibit E of its application as NPCR's service area. NPCR requested the ETC designation as a prerequisite to being eligible to receive federal universal service support.

³See Application, at 2; In re Sprintcom, Inc., Docket No. 98-0359, Decision and Order No. 16697, filed on November 10, 1998; and In re NPCR, Inc., Docket No. 99-0038, Decision and Order No. 17036, filed on June 15, 1999.

By Decision and Order No. 21089, filed on June 25, 2004, the commission approved NPCR's request, subject to certain conditions. As a result, the commission "granted ETC designation to NPCR in specified wire centers of non-rural telephone company Verizon Hawaii, Inc. (now Hawaiian Telcom, Inc.) and also in the study area of rural telephone company Sandwich Isles Communications, Inc."⁴

On February 7, 2006, the commission, on its own motion, amended the annual reporting requirements set forth in Decision and Order No. 21089, by replacing said requirements with the annual ETC certification and reporting requirements adopted by the commission in In re Public Util. Comm'n, Docket No. 05-0243, Decision and Order No. 22228, filed on January 17, 2006.⁵

⁴Application, at 4.

Hawaiian Telcom, Inc. ("Hawaiian Telcom"), a commission-designated ETC, is the incumbent provider of intrastate telecommunications services. Sandwich Isles Communications, Inc. ("Sandwich Isles"), a commission-designated ETC, is authorized by the commission to provide intrastate telecommunications services on lands administered by the State Department of Hawaiian Home Lands. See In re Sandwich Isles Comm., Inc., Docket No. 96-0026.

⁵In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104 Order No. 22274, filed on February 7, 2006.

In In re Public Util. Comm'n, Docket No. 05-0243, the commission opened an investigation that culminated in the adoption of annual certification requirements that apply to telecommunications providers that have been designated as ETCs by the commission.

C.

Applicants' Position

By their Application filed on December 4, 2007, Applicants request that the commission: (1) amend the ETC designation granted to NPCR to include Sprintcom in the non-rural telephone company areas where NPCR was previously designated, i.e., the areas served by Hawaiian Telcom and identified in Exhibit A of the Application; and (2) issue a supplemental certification to the FCC and Universal Service Administrative Company regarding Sprintcom's and NPCR's use of universal service support for calendar years 2007 (if applicable) and 2008.⁶

By way of background, Applicants explain:

1. From the time of NPCR's designation as an ETC by the commission in June 2004 to the present, NPCR has been operating as an ETC within its designated service areas.

2. In 2006, Sprint acquired NPCR, and the FCC and the commission approved the transfer of control of the licenses associated with NPCR's CMRS.⁷

⁶The draft certification letter is attached as Exhibit H to the Application. "In support of this certification request, NPCR and Sprintcom hereby certify that all federal high-cost universal service support they expect to receive in 2007 and 2008 will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended pursuant to 47 U.S.C. § 254(e)." Application, at 19.

⁷See In re Sprint Comm. Co. L.P., Docket No. 2006-0052, Decision and Order No. 22466, filed on May 15, 2006; see also In re Sprint Comm. Co., L.P., Docket No. 05-0045, Decision and Order No. 21715, filed on April 4, 2005.

3. Within the State, NPCR and Sprintcom "are the operating entities that together provide Sprint service."⁸ "NPCR, as well as other operating entities providing NEXTEL brand service, have been integrated into Sprint and provide service in conjunction with other Sprint operating entities."⁹ Specifically, "[s]ince 2006, Sprint has provided both CDMA and iDEN services in Hawaii through its subsidiaries, NPCR and Sprintcom. Sprint has integrated the iDEN wireless service provided by NPCR and the CDMA service provided by Sprintcom so that a variety of calling plans using one or both of these services, and jointly marketed under the Sprint brand name, are available to Hawaii consumers."¹⁰

4. To date, Sprint has received universal service funding only for customers of NPCR who receive service via Sprint's iDEN network facilities. Thus, Sprint presently does not use federal universal service funds received in conjunction with NPCR's designation as an ETC in Hawaii to accomplish build-out objectives associated with Sprintcom's CDMA network.

5. The amendment of NPCR's ETC designation to include Sprintcom for the areas served by Hawaiian Telcom "will allow federal universal service funding received by Sprint to be used for capital investment associated with CDMA technology[,] as it has to date used such funding to invest in its iDEN network."¹¹

⁸Application, at 2.

⁹Application, at 1-2.

¹⁰Application, at 5.

¹¹Application, at 6.

"Sprint will be eligible to receive federal universal service support for each qualified line served by either NPCR or Sprintcom in the Hawaiian Telcom areas, and for each qualified line served by NPCR in the Sandwich Isles areas. This will allow NPCR and Sprintcom to jointly utilize universal service support to provide the maximal benefit to Hawaii's citizens."¹²

6. Sprint's revised 2007-2008 service improvement plan, attached as confidential Exhibit B to the Application: (A) shows that Sprint will spend all of the federal universal service support funds it anticipates receiving in 2008 for the fund's intended purpose;¹³ (B) demonstrates that Sprint's anticipated investment in its network facilities in the State will significantly exceed the incremental high-cost support associated with the granting of this Application; and (C) some funds received in connection with NPCR's ETC designation will be used for the build out of CDMA technology associated with Sprintcom's service. "The flexibility Sprint seeks in this Application is necessary because the wireless communications industry continues to undergo rapid technological and structural change, and because investment in iDEN technology is not likely to continue at the present level."¹⁴

7. "Because Sprint does not seek to amend NPCR's designation in areas served by Sandwich Isles[,] the policy

¹²Application, at 6.

¹³If the Application is granted, Sprintcom anticipates receiving approximately \$36,000 per year in additional federal universal service funding for lines served by Sprintcom in the Hawaiian Telcom service areas.

¹⁴Application, at 7.

issues associated with ETC designation in a rural telephone company area need not be addressed."¹⁵

In seeking the relief requested in their Application, Applicants assert that Sprintcom meets all of the requirements for ETC designation and will comply with all annual ETC certification and reporting requirements applicable to NPCR.

Sprintcom also contends that its designation as an ETC is consistent with the public interest. In Applicants' view, such action will:

1. Conform the ETC designation to Sprint's operational structure and give it the flexibility to target universal service funds toward build out goals associated with both network technologies it operates. Such flexibility will provide efficiency and ensure that Sprint can use federal universal service support to maximize benefits to Hawaii's consumers in the long-term.

2. "[E]xpand the availability of competitive services in Hawaii. As universal support is used to facilitate [the] build out of Sprint's CDMA network, consumers will see increased

¹⁵Application, at 2; see also id. at 6. In other words, Applicants contend that the public interest standard set forth in 47 U.S.C. § 214(e)(2) does not apply. See Application, at 10. In this respect, 47 U.S.C. § 214(e)(2) states in relevant part: "Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest."

Notwithstanding Applicants' position that the public interest standard is inapplicable herein, Applicants state that it is "good practice" to explain why their requested relief is in the public interest. Thus, Applicants present their public interest analysis in their: (1) Application; and (2) response to CA-IR-1.

access to mobile services, increased access to emergency services, and access to innovative services. Sprint's CDMA network provides exceptional sound and transmission quality using a state-of-the-art technology capable of delivering all-digital wireless voice communications, mobile messaging, email and Internet access, and [Global Positioning System ("GPS")] location assistance."¹⁶

D.

Consumer Advocate's Position

On February 29, 2008, the Consumer Advocate filed its Statement of Position, informing the commission that it does not object to the commission's approval of the Application.¹⁷ According to the Consumer Advocate, "[i]t appears . . . that the CMRS services of both NPCR and Sprintcom are currently marketed as Sprint services, and the Consumer Advocate presumes that Sprint will eventually migrate to a single technology network."¹⁸ That said, the Consumer Advocate states that Sprintcom meets the ETC designation requirements, either jointly providing service with NPCR, or as a separate provider on its own. In particular, the Consumer Advocate asserts:

1. Sprintcom meets the requirements for designation as an ETC, consistent with 47 U.S.C. 214(e)(1); 47 C.F.R.

¹⁶Application, at 11.

¹⁷Consumer Advocate's Statement of Position; and Certificate of Service, filed on February 29, 2008 (collectively, "Statement of Position").

¹⁸Consumer Advocate's Statement of Position, at 4.

§ 54.101(a)(1) - (a)(9); 47 C.F.R. Part 54, Subpart E; 47 C.F.R. § 54.202; and In re Public Util. Comm'n, Docket No. 05-0243, Decision and Order No. 22228.¹⁹

2. Sprintcom commits to complying with the applicable conditions set forth by the commission in In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104.

3. The commission, in In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, Decision and Order No. 21089, previously held that NPCR's designation as an ETC was consistent with the public interest. In the current proceeding, Sprintcom's request for designation as an ETC is likewise consistent with the public interest:

The Consumer Advocate finds that Sprintcom's representations in the instant filing, as well as, in its partnership with NPCR in providing Sprint services in Hawaii, mirrors most, if not all, of the above points cited in Decision and Order No. 21089 by the Commission in support of the ETC designation for NPCR being consistent with the public interest. Sprintcom's representations in the instant filing (i.e., increased access to mobile service, increased access to emergency services, access to innovative services, exceptional sound and transmission quality using state-of-the-art technology, mobile messaging, GPS location assistance, etc.), also, appear to meet most, if not all, of the Cost-Benefit Analysis factors listed . . . by the FCC in its current interpretation in Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6389 (2005) of the public interest requirements needed for ETC designation in either rural or non-rural areas. The Consumer Advocate notes that since Sprintcom is applying only for ETC designation in the non-rural (and not rural) telephone company areas, the

¹⁹See Consumer Advocate's Statement of Position, Section II.B, ETC Designation Requirements, at 4-7; and Section II.C, Sprintcom Meets the ETC Designation Requirements, and Commits to Adhering to the Additional Voluntary and Commission Imposed Requirements, at 7-9; see also HAR § 6-81-9.

matter of "cherry picking" or "cream skimming" is moot in the instant filing. Moreover, Sprint's estimate of an additional \$36,000 per year in federal universal service funding for lines served by Sprintcom in Hawaii would have minimal impact to the FCC's high cost fund.

. . . . Various material[s] reviewed by the Consumer Advocate . . . seem to indicate that eventually Sprint will migrate to a single technological network (likely the [CDMA] network of Sprintcom), and that near future advertising may eventually phase out the Nextel reference. With that in mind, the Consumer Advocate recommends Commission approval of an ETC designation for Sprintcom as being in the public interest to avoid any disruptions or interruptions to the universal support benefits enjoyed by the affected Hawaii customers should the NPCR iDEN network or the named Nextel entity be eventually eliminated by Sprint.

Consumer Advocate's Statement of Position, at 12-13 (footnotes, text, and citations therein omitted) (emphasis added).

In its concluding remarks, the Consumer Advocate:

1. Notes that Applicants' confidential Exhibit B, filed in support of the Application, "simply lists all of the 2007 and 2008 projects, and does not specifically identify the projects that Sprintcom or NPCR deem to be for under-served areas. These projects should deserve a higher priority for completion versus projects for areas that have adequate service but produce higher revenues. The Consumer Advocate anticipates that the annual reporting requirements as set forth in Decision and Order No. 22228 should provide the information necessary to resolve this uncertainty for the Commission and Consumer Advocate in regard to [Sprintcom's] designation as an ETC being in the public interest. The Consumer Advocate expects Sprintcom to make

a showing in the annual filing that it is meeting the benefits of serving the 'under-served' type areas referred to above."²⁰

2. "[D]efers to the Commission the matter of determining whether to expand NPCR's ETC designation to include Sprintcom, to designate Sprintcom as a separate ETC, or to apply any other ETC designation approach the Commission may determine to be appropriate in this specific instance."²¹

E.

Applicants' Response

On March 7, 2008, Applicants filed their Response to the Consumer Advocate's Statement of Position.²² In their Response, Applicants respond to three matters raised by the Consumer Advocate:

1. Applicants clarify that "[f]or the foreseeable future Sprint will operate both its iDEN and CDMA networks in Hawaii, and it has no plans to phase out or eliminate either network. These networks will continue to be available for the benefit of Hawaii consumers, and granting this Application will allow universal service funding to be used to support both networks in the most efficient way possible."²³

²⁰Consumer Advocate's Statement of Position, at 14.

²¹Consumer Advocate's Statement of Position, at 14-15.

²²Applicants' Response to the Consumer Advocate's Statement of Position; Exhibit A; and Certificate of Service, filed on March 7, 2008 (collectively, "Response").

²³Applicants' Response, at 2.

2. With respect to Applicants' confidential Exhibit B, "Sprint is willing to work with the Consumer Advocate, and agrees that the annual reporting process established in Commission [Decision and] Order No. 22228 is the proper forum for doing that."²⁴

3. Applicants considered their options and "decided to request the amendment of NPCR's designation to include Sprintcom in the non-rural areas. This is the option that will ensure universal service support will continue to be received as Sprint provides the supported services to Hawaii consumers, and that will give [Sprint] the flexibility to use support most efficiently. And, as noted by the Consumer Advocate, this approach is consistent with the way in which Sprint does business in Hawaii - jointly through two operating entities in a way that is essentially transparent to consumers."²⁵

Applicants request commission action on their Application by April 30, 2008.²⁶

II.

Federal and State Requirements

A.

Overview

On February 27, 2004, the Federal-State Joint Board on Universal Service ("Joint Board") issued its Recommended Decision

²⁴Applicants' Response, at 2.

²⁵Applicants' Response, at 1-2.

²⁶See Response, at 3.

to the FCC.²⁷ In part, the Joint Board recommended that: (1) the FCC adopt permissive federal guidelines for states to use when determining whether an applicant is qualified for designation as an ETC; and (2) the states adopt an annual certification process "for all ETCs to ensure that federal universal service support is used to provide the supported services and for associated infrastructure costs."²⁸

On June 8, 2004, the FCC issued its Notice of Proposed Rulemaking, seeking comments on the Joint Board's Recommended Decision.²⁹ On March 17, 2005, the FCC issued its Report and Order addressing the Joint Board's Recommended Decision.³⁰

For ETCs subject to its jurisdiction, the FCC, by its Report and Order:³¹

²⁷In re Federal-State Joint Board on Universal Service, Recommended Decision of the Federal-State Joint Board on Universal Service, released February 27, 2004, in CC Docket No. 96-45 ("Recommended Decision").

²⁸Recommended Decision, ¶¶ 46-48, at 19-20.

²⁹FCC Notice of Proposed Rulemaking, adopted June 2, 2004 and released June 8, 2004, in CC Docket No. 96-45.

³⁰In re Federal-State Joint Board on Universal Service, FCC Report and Order, released March 17, 2005, in CC Docket No. 96-45, as amended on April 21, 2005 ("Report and Order"). See also FCC Erratum, released April 21, 2005, in CC Docket No. 96-45.

³¹A state commission shall, upon request or its own motion, designate a common carrier that meets the applicable requirements of an ETC for the service area designated by the state commission. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(b); see also HAR § 6-81-9(a). However, for common carriers that are not subject to the jurisdiction of a state commission, the FCC is responsible for the ETC designation. 47 U.S.C. § 214(e)(6).

1. Adopted additional ETC eligibility requirements, and encouraged state commissions to apply these same requirements to all ETC applicants for which they exercise jurisdiction;³² and

2. Adopted annual certification and reporting requirements, and encouraged the states to adopt the annual reporting requirements, and to apply the requirements to all ETCs.³³

On May 25, 2005, the FCC's additional ETC eligibility requirements and its annual certification and reporting requirements were published in the Federal Register,³⁴ and subsequently codified at 47 C.F.R. §§ 54.202 and 54.209. Thereafter, on January 17, 2006, the commission, in In re Public Util. Comm'n, Docket No. 05-0243, adopted annual certification and reporting requirements applicable to entities designated as ETCs by the commission,³⁵ including NPCR.³⁶

³²See FCC's Report and Order, ¶¶ 20-39, at 10-18.

³³See FCC's Report and Order, ¶ 68-72, at 31-33.

³⁴70 Federal Register 29978 - 29979 (May 25, 2005) (codified at 47 C.F.R. §§ 54.202, 54.209).

³⁵In re Public Util. Comm'n, Docket No. 05-0243, Decision and Order No. 22228, filed on January 17, 2006. The commission's annual certification and reporting requirements applicable to entities designated as ETCs by the commission are set forth in Exhibit 1 of Decision and Order No. 22228. The FCC's annual ETC certification and reporting requirements were utilized as a foundation in developing the commission's requirements.

³⁶See In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, Order No. 22274, filed on February 7, 2006 (NPCR shall comply with the annual certification requirements adopted by the commission in Docket No. 05-0243, Decision and Order No. 22228).

A.

ETC Designation

Pursuant to sections 254(e) and 214(e)(1) of the Federal Telecommunications Act ("Act"), only a common carrier that is designated an ETC under section 214(e) is eligible to receive federal universal service support. 47 U.S.C. §§ 214(e)(1), 254(e); and 47 C.F.R. § 54.201(a) and (d). By definition, an ETC may include a provider of CMRS.³⁷

In accordance with section 214(e)(1)(A) and (B) of the Act, an ETC must, throughout the service area for which the designation is received:

- (A) Offer the services that are supported by federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and the resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) Advertise the availability of such services and the charges therefor using media of general distribution.

47 U.S.C. § 214(e); 47 C.F.R. § 54.201(d); HAR § 6-81-9(a).

The FCC, by regulation, has identified and defined the following core services for federal universal service support:

1. Voice grade access to the public switched network.

³⁷An ETC means a carrier designated as such by a state commission pursuant to 47 C.F.R. § 54.201. The definition of telecommunications carrier, in turn, "includes cellular mobile radio service (CMRS) providers[.]" 47 C.F.R. § 54.5; see also 47 C.F.R. §§ 20.9(a)(4), 54.201(d).

2. Local usage.³⁸
3. Dual tone multi-frequency signaling or its functional equivalent.
4. Single-party service or its functional equivalent.
5. Access to emergency services, which includes "access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems[.]"
6. Access to operator services.
7. Access to interexchange service.
8. Access to directory assistance.
9. Toll limitation for qualifying low-income customers.

See 47 C.F.R. § 54.101(a); see also 47 U.S.C. § 254(a).

To be eligible to receive federal universal service support as a designated ETC, the carrier must offer each of these core services. 47 C.F.R. § 54.101(b). A carrier that receives such support "shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 U.S.C. § 254(e); 47 C.F.R. § 54.7.

Moreover, the commission has applied the FCC's additional ETC eligibility requirements, as modified, in its most recent proceeding involving the designation of a

³⁸The FCC defines "local usage" as "an amount of minutes of use of exchange service, prescribed by the [FCC], provided free of charge to end users[.]" 47 C.F.R. § 54.101(a)(2).

telecommunications provider as an ETC.³⁹ Specifically, as codified in 47 C.F.R. § 54.202(a), an ETC applicant must:

1. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service.
2. Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
3. Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement.
4. Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent local exchange carrier in the service areas for which it seeks designation.
5. Certification that the applicant acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

See 47 C.F.R. § 54.202(a); see also FCC's Report and Order, ¶¶ 20-39, at 10-18.

Under section 214(e)(2) of the Act, a state commission shall, upon request or its own motion, designate a common carrier that meets the requirements of section 214(e)(1)(A) and (B), an ETC for the service area designated by the state commission. 47 U.S.C. § 214(e)(2); and 47 C.F.R. § 54.201(b); see also HAR

³⁹See In re Coral Wireless, LLC, dba Mobi PCS, Docket No. 05-0300, Decision and Order No. 23275, filed on February 23, 2007.

§ 6-81-9(a).⁴⁰ "Service area," in turn, is defined as the geographic area established by the state commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

Section 214(e)(2) of the Act also provides:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of [47 U.S.C. § 214(e)(1)(A) and (B)]. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. § 214(e)(2).⁴¹

The FCC, in its Report and Order, subsequently clarified that the public interest analysis should apply regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier:

We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier We find the public interest concerns that exists for carriers seeking ETC designation in areas served by rural carriers also exist in study areas served by non-rural

⁴⁰HAR § 6-81-9(a) provides that, upon a carrier's written petition or the commission's own motion, the commission will designate the petitioner-carrier as eligible to receive federal universal service support, provided that it meets the service offerings and advertising requirements set forth in section 214(e) of the Act.

⁴¹The term "rural telephone company" is defined in 47 U.S.C. § 153(37).

carriers. Accordingly, we find that many of the same factors should be considered in evaluating the public interest for both rural and non-rural designations, except that creamskimming effects will be analyzed only in rural study areas because the same potential for creamskimming does not exist in areas served by non-rural incumbent LECs.

FCC's Report and Order, ¶ 42, at 19-20.

B.

Lifeline and Link Up Programs

Lifeline is a federal program that provides discounts to low income consumers on their monthly telephone bills. See 47 C.F.R. Part 54, Subpart E, Universal Support for Low-Income Consumers. The federal Link Up program assists low income consumers with telephone installation costs. Id. An ETC must: (1) make Lifeline and Link Up available to qualifying low-income consumers; and (2) advertise the availability of these federal programs in a manner reasonably designed to reach those likely to qualify for these programs. See 47 C.F.R. §§ 54.405, 54.411.

C.

Annual Certification

State commissions must annually certify to the FCC that "all federal high-cost support provided" to an ETC that is subject to its jurisdiction "will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 C.F.R. §§ 54.313(a), 54.314(a).

III.

Discussion

A.

ETC Designation

Applicants request that the commission amend the ETC designation granted to NPCR to include Sprintcom in the non-rural telephone company areas where NPCR was previously designated. Based on a thorough review of the record, the commission makes the following findings and conclusions:⁴²

1. Sprintcom is a common carrier pursuant to federal law, and the wireless telecommunications services provided by Sprintcom are common carrier services. 47 U.S.C. § 153(10) and (44); and 47 C.F.R. §§ 20.9(a)(4), 54.201(d), 54.5.

2. Sprintcom is capable of providing, and currently does provide, the core services over its existing network infrastructure in the State. See 47 U.S.C. §§ 254(a) and 214(e)(1)(A); 47 C.F.R. §§ 54.101, 54.201(d)(1) and (f). In particular:

A. Voice grade access to the public switched network:

All of Sprintcom's Hawaii-based subscribers are able to make and receive calls on the public switched network within the frequency range specified by the FCC at 47 C.F.R. § 54.101(a)(1).

⁴²In making the pertinent findings and conclusions, the commission emphasizes that: (1) the Application is verified under oath by the Vice President of Product Development and Management for Sprint, the parent entity, pursuant to HAR § 6-61-17, and is signed by Applicants' counsel; and (2) Applicants' Response is also signed by Applicants' counsel.

B. Local usage: Sprintcom currently offers a variety of service offerings that include varying amounts of local usage. See 47 C.F.R. § 54.101(a)(2).

C. Dual tone multi-frequency ("DTMF") signaling or its functional equivalent: Sprintcom uses out-of-band digital signaling and in-band multi-frequency signaling that is the functional equivalent to DTMF signaling, consistent with the FCC's requirements. See 47 C.F.R. § 54.101(a)(3).

D. Single-party service: All of Sprintcom's service offerings provide single-party service by providing a dedicated message path for the duration of the user's wireless transmission, consistent with 47 C.F.R. § 54.101(a)(4).

E. Access to emergency services: Sprintcom currently provides all of its customers with the ability to access emergency services by dialing 911. Sprintcom is timely deploying E911 facilities in Hawaii in response to requests from local Public Service Access Point ("PSAP") providers and will continue to work with local PSAP providers to do so. See 47 C.F.R. § 54.101(a)(5).

F. Access to operator services: Sprintcom provides all of its customers with access to operator services, consistent with 47 C.F.R. § 54.101(a)(6).

G. Access to interexchange service: All of Sprintcom's customers have the ability to make and receive interexchange calls. See 47 C.F.R. § 54.101(a)(7).

H. Access to directory assistance: All of Sprintcom's customers have access to directory assistance by dialing 411 or 555-1212, consistent with 47 C.F.R. § 54.101(a)(8).

I. Toll limitation for qualifying low-income customers: Sprintcom will provide toll limitation to Lifeline subscribers.

3. Sprintcom currently offers and will continue to advertise the availability of the core services and the corresponding rates for these services throughout the State using media of general distribution, including radio, television, and print advertising, and also at its website. See 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

4. Sprintcom will meet the additional ETC eligibility requirements set forth in 47 C.F.R. § 54.202(a), and recently applied by the commission in In re Coral Wireless, LLC, dba Mobi PCS, Docket No. 05-0300, Decision and Order No. 23275, as modified. In particular:

A. Commitment to providing service: Upon reasonable request, Sprintcom commits to providing service to any potential customer within the areas where it is designated as an ETC. If the potential customer is located within Sprintcom's designated ETC service area and existing network coverage, Sprintcom will provide service on a timely basis. See 47 C.F.R. § 54.202(a)(1)(i).

Conversely, if the potential customer is within Sprintcom's designated ETC service area but outside of the carrier's existing network coverage, Sprintcom will determine

whether service can be provided within a reasonable period of time, at reasonable cost, by modifying or replacing the requesting customer's equipment; deploying a roof-mounted antenna or other equipment; adjusting the nearest cell tower; adjusting network or customer facilities; reselling services from another carrier's facilities to provide service; or employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. See 47 C.F.R. § 54.202(a)(1)(i).

In addition, Sprintcom has submitted its revised 2007-2008 service improvement plan, attached as confidential Exhibit B to the Application, which "identifies anticipated capital expenditures in the carrier's service area, including maps detailing the planned targets and an explanation of how universal service support will be used to improve signal quality, coverage, capacity, or other network improvement targets."⁴³ See 54 C.F.R. § 54.202(a)(1)(ii); In re Public Util. Comm'n, Docket No. 05-0243, Decision and Order No. 22228, at 11-13, 15-16, and Exhibit 1, ¶ A(1); see also In re Coral Wireless, LLC, dba Mobi PCS, Docket No. 05-0300, Decision and Order No. 23275, at 12-13, 16, and 19.

B. Ability to remain functional in emergency situations: As represented by Sprintcom:

The network used by Sprintcom is monitored 24 hours a day, 7 days a week, 365 days a year. Sprintcom maintains adequate back-up power to ensure functionality without an external power source. Each cell site in its network is equipped with a minimum of four hours of battery backup. Each cell site also has the necessary equipment to

⁴³Application, at 13 (footnote and citations therein omitted).

allow a portable generator to be quickly and safely connected for standby power. Sprintcom has portable generators located in Hawaii that are available for transport to an area affected by a commercial power outage. In addition, mobile switching center ("MSC") locations used to deliver Sprintcom's service in Hawaii are equipped with battery back-up systems and dedicated automatic start-up generators.

Sprintcom is capable of rerouting traffic around damaged facilities. Many of its cell sites provide overlapping coverage for neighboring areas that can be used in the event of damage to a particular facility. In the event of a major failure of a cell site, neighboring sites could be adjusted to provide coverage to a wider service area. In addition, Sprint has "Cells On Wheels" ("COWs"), which are portable self-contained cell sites that can provide a temporary coverage solution in case of damage to network facilities used by Sprintcom. Sprintcom's cell sites are engineered with interconnection redundancy utilizing dual fiber facilities at all switch locations, and most of its transport hub locations are on SONET bi-directional fiber rings. These practices significantly reduce the chance that fiber cuts or equipment failure will result in a loss of service.

Sprintcom is capable of managing traffic spikes resulting from emergency situations. Its network is designed to minimize call blocking. In order for a traffic spike to result in call blocking, the number of simultaneous calls must exceed the total number of voice paths available at the one or more serving cell sites at a given location. Sprintcom's cell sites are designed based on a standard of not more than one percent (1%) blocked calls on any cell site sector during its busiest hour using a 14-day average. When a sector approaches this level of utilization, Sprintcom takes steps to increase call capacity. Traffic spikes can also be managed through the deployment of COWs.

Application, at 13-14; see 47 C.F.R. § 54.202(a)(2).

C. Consumer protection and quality service standards:

In 2003, Sprint's predecessor became a signatory to the Cellular Telecommunications and Internet Association's Consumer Code for

Wireless Service ("Consumer Code"), and Sprint has voluntarily remained in compliance with the Consumer Code since then. Accordingly, Sprint has implemented the policies and practices required of the signatories throughout its service areas in Hawaii. See 47 C.F.R. § 54.202(a)(3).

D. Local usage: Sprintcom's service offerings, including the amount of local usage in each plan, are set forth in Exhibit C of the Application. According to Sprintcom:

Sprintcom offers customers generally available plans with varying amounts of local usage, including plans that have unlimited calling. Sprintcom's service offerings generally include nationwide calling, so its local calling area is all households and phones in the United States. These service offerings are comparable to basic local exchange service provided by Hawaiian Telcom. Hawaiian Telcom's basic local exchange service may allow for unlimited calling, but those minutes can only be used within a single exchange (or a group of neighboring exchanges), and from a fixed location Consistent with 47 C.F.R. § 54.202(a)(4), each of these plans is a comparable local usage plan.

Application, at 15; see 47 C.F.R. § 54.202(a)(4).

E. Equal access: Sprintcom acknowledges that the FCC may require that it provide equal access within its designated ETC service areas in the event that no other ETC is providing equal access within that service area. See 47 C.F.R. § 54.202(a)(5).

5. Sprintcom will participate in the FCC's Lifeline and Link Up programs, consistent with NPCR's current participation. Moreover, toll limitation will continue to be provided at no additional charge to customers who request so, and

they will not be required to pay a service deposit. See 47 C.F.R. Part 54, Subpart E.

Sprintcom will also advertise the availability of Lifeline and Link Up assistance in a manner that informs the general public within its designated ETC service areas of both the services available and the corresponding charges, consistent with the already on-going Lifeline and Link Up advertising already undertaken by NPCR. See 47 C.F.R. Part 54, Subpart E.

6. In In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, Decision and Order No. 21089, the commission concluded that NPCR's designation as an ETC was consistent with the public interest.⁴⁴ Similarly herein, the commission finds that, consistent with the public interest, Sprintcom, as an ETC, commits to: (A) participating in the federal Lifeline and Link Up programs, thus providing qualified low-income customers with the choice of using CMRS, and access to the FCC-designated core services; and (B) advertising, offering, and providing the FCC-designated core services throughout its designated service area, thereby minimizing any potential for "cherry picking" or "cream skimming" on its part. Moreover, as represented by Applicants, Sprintcom's designation as an ETC will enable Sprint to utilize federal universal service funds to accomplish its build out objectives associated with Sprintcom's CDMA network, as

⁴⁴See In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, Decision and Order No. 21089, Section IX.C, Public Interest, at 31-32.

Sprintcom's expenditure of such funds to date has been limited to NPCR's iDEN network.⁴⁵

Based on the foregoing, the commission finds that Sprintcom meets the applicable requirements for designation as an ETC for the non-rural telephone company areas where NPCR was previously designated, i.e., the areas served by Hawaiian Telcom and identified in Exhibit A of the Application. Accordingly, the commission approves Applicants' request to amend the ETC designation granted to NPCR to include Sprintcom in the non-rural telephone company areas where NPCR was previously designated, subject to certain conditions, as set forth below.

B.

Conditions of ETC Designation

In In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, the commission adopted certain conditions to govern NPCR's ETC status.⁴⁶ Applicants correctly note that some of these conditions have since been superseded by or are duplicative of

⁴⁵To reiterate, if the Application is granted, Sprintcom anticipates receiving an additional \$36,000 per year in federal universal service funding for lines service by Sprintcom in the Hawaiian Telcom service areas. This amount, the commission notes, will have a de minimis impact on the federal universal service fund.

⁴⁶See In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, Decision and Order No. 21089, Section IX.D, Conditions of ETC Designation, at 32-35, and Section X, Orders, at 36-39; as amended by Order No. 22274.

several provisions adopted by the FCC in its regulations, or by the commission in In re Public Util. Comm'n, Docket No. 05-0243.⁴⁷

In the Application, Sprintcom commits to abiding by the applicable conditions set forth by the commission in In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, and by the filing of the Application, evidences its intent to comply with these conditions.⁴⁸ Finding the applicable conditions reasonable, the commission adopts the following conditions to govern Sprintcom's designation as an ETC:

1. Sprintcom shall adhere to the following service disruption standards:
 - A. Clear ninety-five (95) percent of all out-of-service troubles within twenty-four (24) hours of the time such troubles are reported.
 - B. Average no greater than six (6) customer trouble reports per one hundred (100) lines per month.
 - C. Meet ninety (90) percent of repair date commitments.

⁴⁷Specifically: (1) the adoption of the Cellular Telecommunication and Internet Association's Consumer Code for Wireless Service; (2) providing to the commission, on an annual basis, the number of consumer complaints per 1,000 handsets; (3) implementing a multi-step process to ensure that the ETC meets its obligations to respond to reasonable requests for service; and (4) complying with all applicable FCC regulations and standards implementing section 254(e) of the Act. In In re NPCR, Inc., dba Nextel Partners, Docket No. 03-0104, the commission issued its written decision on June 25, 2004, while the FCC's regulations that implement section 254(e) of the Act took effect on May 25, 2005.

⁴⁸See Application, Section VI, at 16-18, and Exhibits D to G. Exhibit D identifies the point of contact for any complaints received by the commission. Exhibit E provides a map showing the areas where Sprintcom will be serving as an ETC if the Application is granted. Exhibit F is a proposed informational Lifeline tariff Sprintcom intends to file with the commission if the Application is granted. Exhibit G is Sprintcom's detailed advertising plan.

If service is to be interrupted for scheduled repairs or maintenance, or if the occurrence of an interruption in service is otherwise known to Sprintcom, it will promptly notify its affected customers, and as appropriate, law enforcement and fire agencies, before the interruption occurs. Repair and maintenance work shall be performed at a time that will cause the least inconvenience to its customers.

2. Sprintcom shall adhere to the following call answering standards:

- A. At least ninety-seven (97) percent of all correctly dialed local and inter-island calls will be completed.
- B. Eighty-five (85) percent of calls made to its customer service line will be answered within twenty (20) seconds from the time that a customer punches "0" to reach an operator.
- C. Eighty-five (85) percent of all calls to inter-island toll operators and directory assistance operators will be delivered within ten (10) seconds.

3. Sprintcom shall provide to the commission a point of contact to address any customer service or service quality complaints the commission receives. The contact person will have access to customer account information and the authority to resolve customer service issues.

4. Sprintcom shall file with the commission a map showing the areas in which it is designated an ETC.

5. Sprintcom shall file an informational tariff with the commission incorporating the rates, terms, and conditions for its Lifeline service offering and its Link Up discounts.

6. Sprintcom shall file with the commission its detailed advertising plan for the provision of the core services, including the content and manner of its planned advertisements, and the targeted consumers.

7. Sprintcom shall fully cooperate and respond to any requests for information or data from the commission or the Consumer Advocate.

8. Sprintcom shall comply with all applicable standards governing CMRS providers in the State, including the standards set forth in HAR chapter 6-80, to the extent modified or not waived by In re Public Util. Comm'n, Docket No. 03-0186, the commission's CMRS proceeding.

9. Sprintcom shall comply with all current and future laws, decisions, or orders applicable to the federal universal service fund and support programs.

10. Sprintcom shall comply with the commission's annual ETC certification and reporting requirements set forth in In re Public Util. Comm'n, Docket No. 05-0243, Decision and Order No. 22228.

IV.

Orders

THE COMMISSION ORDERS:

1. The application to amend the ETC designation granted to NPCR to include Sprintcom, Inc., in the non-rural telephone company areas where NPCR, Inc. was previously designated, i.e., the areas served by Hawaiian Telcom, filed on

December 4, 2007, is approved. Sprintcom, Inc.'s designated service area is identified in Exhibit A of the Application.

2. The conditions set forth in Section III.B, Conditions of ETC Designation, above, are adopted and incorporated by reference herein. The information set forth in Conditions Nos. 3 to 6, of Section III.B, Conditions of ETC Designation, above, shall be filed with the commission by May 12, 2008, with copies served on the Consumer Advocate.

3. The commission reserves the right to revoke Sprintcom, Inc.'s ETC status: (A) should any of the information or data provided by Sprintcom, Inc. in this proceeding be proven inaccurate or incorrect; (B) if Sprintcom, Inc.'s receipt or use of federal universal service support monies is inconsistent with applicable federal law, including any FCC regulations, decisions, and orders, or applicable State law, including any of the conditions imposed by the commission herein; or (C) if Sprintcom, Inc. does not satisfy any of the conditions or requirements imposed by the commission.

DONE at Honolulu, Hawaii APR 30 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

By [Signature]
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

2007-0402.sl

CERTIFICATE OF SERVICE

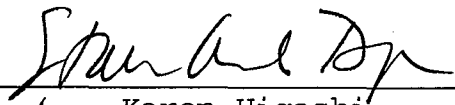
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24169 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: APR 30 2008